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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,064	09/05/2003	Henry Welling Lane	DIOP-06301	8334
34209	7590	05/03/2005	EXAMINER	
LAW OFFICE OF DEREK J. WESTBERG 2 NORTH SECOND STREET, SUITE 1390 SAN JOSE, CA 95113			JOHNSON, JERROLD D	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/656,064	<b>Applicant(s)</b> LANE, HENRY WELLING	
	<b>Examiner</b> Jerrold Johnson	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>03/10/05</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: There is not believed to be a proper antecedent basis for the claimed subject matter set forth in claim 5.

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-5, 16-22, 25-29 and 40-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Matney US 4,469,226.

Re claim 1, Matney discloses a product card 16 a case 20, and means for removably attaching the product card to the case. This 112 6<sup>th</sup> paragraph limitation is met by the disclosed process of heat sealing the case to the product card through the blister 50 as is set forth in col. 4, line 37, and col. 5, lines 28-60. The adhesive structure produced by the heat sealing process is considered to be an equivalent of the disclosed use of adhesive in the present application.

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Re claim 2, the fastener comprises a first portion 68 coupled to a stationary portion 28 of the case and a second portion 24 coupled to a closable portion 22 of the case.

Re claim 3, the closable portion of the case 22 comprises a flexible flap. Note that no definition of "flexible" has been set forth and the closable portion of the case would inherently possess some flexibility.

Re claim 4, the product card includes an area defined by a perforation 18. The perforation would define that which surrounds it.

Re claim 5, the product card includes a first side, a second side and an area of equal shape and size defined on both the first side and the second side by the perforation. This limitation, for which there is no antecedent basis in the spec as set forth above, is confusing, and the Examiner is uncertain what is being claimed. Regardless, the product card of Matney has two sides of equal shape and size and a perforation, and therefore meets the limitations of the claim.

Re claim 16, the product card includes an aperture 18, the aperture configured to allow the product card to be hung for display.

Re claim 17, the product card is configured to receive printing.

Re claim 18, the case comprises a flexible material, note that the case must have some flexure so that the latch will work.

Re claim 19, the case comprises a rigid material (the mirror 34).

Re claim 20, the case comprises a transparent material (the blister 50).

Re claim 21, the case comprises an opaque material.

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Re claim 22, the means for removably attaching the product card to the case comprises adhesive, note that the coatings on the product card provide "good adhesion" for the blister 50.

Re method claims 25-29 and 40-46, these method claims set forth the method of making the disclosed structure and essentially restate the structural limitations set forth in the product claims rejected above. The methods are thus inherent in the Matney patent.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claims 23, 24, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matney.

Matney discloses a heat sealing adherence of the blister to the card, but does not disclose other means such as studs, rivets, or hook and loop fasteners.

It would have been obvious to one of ordinary skill in the art to attach the blister and thus the case to the product card via other means which would be known equivalents in the art. In this situation, studs, rivets, or hook and loop fasteners all comprise equivalents to the disclosed heat sealing adherence.

### ***Claim Rejections - 35 USC § 102***

3. Claims 1-10, 16-19, 21-22, 25-35, 40-43, 45 and 46 are rejected under 35 U.S.C. 102(b) as being anticipated by Irvine US 4,360,106.

Re claim 1, Irvine discloses a display apparatus, comprising a product card 21,22; a case 12, the case being closable with a fastener (slot 26 and the area of the flap 19 immediately beneath the perforation which extends into the slot 26), and means for removably attaching the product card to the case (the perforation).

Re claim 2, the fastener comprises a first portion 26 coupled to a stationary portion of the case and a second portion (the area of the flap 19 immediately beneath the perforation which extends into the slot 26) coupled to a closable portion of the case.

Re claim 3, the closable portion of the case 19 comprises a flexible flap.

Re claim 4, the product card includes an area defined by a perforation.

Re claim 5, the product card includes a first side, a second side and an area of equal shape and size defined on both the first side and the second side by the perforation. The product card has two sides of equal size and shape.

Re claim 6, the means for removably attaching the product card to the case includes the case being coupled to the perforated area of the product card, such that the area defined by the perforation is removed from the product card when the case is removed from the product card.

The portion of the product card immediately beneath the perforation remains attached to the case and is thus removed from the product card when the two are separated.

Re claim 7, the case is coupled to the perforated area of the product card by the fastener. Again, the portion of the flap 19 immediately beneath the perforation comprises the second portion of the fastener as it is inserted into the slot 26. And, this portion of the flap 19 immediately beneath the perforation clearly forms the coupling of the case 12 to the perforated area.

Re claim 8, the closable portion of the case is coupled to the perforated area of the product card by the second portion of the fastener (the portion of the flap 19 immediately beneath the perforation).

Re claim 9, the fastener is considered a snap, as the portion of the flap 19 immediately beneath the perforation would snap into the slot 26.

Re claim 10, the first portion of the snap is a male portion of the snap and the second portion of the fastener is a female portion. No structure defining "male" and

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"female" is established, and thus, these terms merely comprise labels which could apply to the identified parts.

Re claim 16, the product card includes an aperture 24,25, the aperture configured to allow the product card to be hung for display.

Re claim 17, the product card is configured to receive printing.

Re claim 18, the case comprises a flexible material.

Re claim 19, the case comprises a rigid material. Note that no definitions have been provided for flexible or rigid, and the case of Irvine is made from a generally rigid material inherently possessing flexibility.

Re claim 21, the case comprises an opaque material.

Re claim 22, the means for removably attaching the product card to the case comprises adhesive 32.

Re method claims 25-35, 40-43, 45 and 46 these method claims set forth the method of making the disclosed structure and essentially restate the structural limitations set forth in the product claims rejected above. The methods are thus inherent in the disclosure of Irvine.

### ***Claim Rejections - 35 USC § 103***

4. Claims 6,7,9,10, 30,31,33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irvine et al. US 4360106 in view of Calvert et al. US 6,047,883.



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Irvine generally discloses snap fastener comprising the slot 26 and the portion of the flap 19 immediately below the perforation that is configured to be disposed within the slot.

Calvert explicitly discloses a snap structure having male and female portions. The snap structure is an equivalent structure to that disclosed by Irvine, and could be used in place of the structure of Irvine set forth above to achieve a fastener having the capability of repeated use without diminished utility, unlike the structure of Irvine which would break from repeated use.

Re claim 6, the snap fastener of Calvert, when disposed on the flap 19 on the portion of the flap immediately beneath the perforation (the portion already serving as the snap fastener), the limitations of the claims 6 is met, as this portion of the flap immediately beneath the perforation is also the portion of the product card that remains in contact with the case following detachment of the product card.

Re claim 7, the case of Irvine is coupled to the perforated area of the product card by the fastener.

Re claim 9, the fastener comprises a snap.

Re claim 10, Calvert discloses the male and female portions suitable for use in the claimed orientation.

5. Claims 11-14,20-21,35-38, and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irvine in view of Fireman US 4,733,775.

Irvine discloses a display apparatus but does not disclose a configuration having a transparent flexible film and a rigid frame.

Re claim 11, Fireman discloses the configuration of a transparent flexible film and a rigid frame disposed for inhibiting collapse of the case.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the display apparatus of Irvine with the structure of an outer transparent flexible film and an inner rigid frame so that the apparatus of Irvine, which includes no recitation of intended contents, could display eyeglasses, etc., in a manner where the contents of the apparatus would be visible to the consumer without the need to open the box.

Re claim 12, the transparent flexible film is wrapped around the rigid frame.

Re claim 13, the rigid frame comprises end portions of the case, as the rigid frame has two lateral side edges (the end portions), and the rigid frame extends from one end of the case to the other end.

Re claim 14, the rigid frame further comprises a spanning member 80 for holding the end portions in fixed positions with respect to one another.

Re claim 20, note transparent film (outer case) of Fireman.

Re claim 21, note the opaque material, the inner rigid frame.

Re method claims 35-38 and 44-45, again these method claims set forth the method of making the disclosed structure and essentially restate the structural limitations set forth in the product claims rejected above. The methods are thus inherent in the disclosure of Irvine in view of Fireman.

6. Claims 15 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irvine in view of Fireman US 4,733,775 and further in view of Newcomer US 6,003,663.

Irvine in view of Fireman does not disclose a nose piece.

Newcomer discloses how a nose piece could easily be configured into the rigid frame of Fireman, to ensure that eyeglasses would be supported within the case in a desired position.

Accordingly, It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the display apparatus of Irvine in view of Fireman with the teaching of Newcomer.

7. Claim 49 is rejected under 35 U.S.C. 102(b) as being anticipated by Irvine.

See the rejection of claims 8 and 9, which sets forth the rejection of the claimed limitations set forth in claim 49.

8. Claims 50-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irvine in view of Fireman US 4,733,775.

See the rejection of claims 11-14,20-21,35-38, and 44-45.

9. Claim 54 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irvine in view of Fireman US 4,733,775 and further in view of Newcomer US 6,003,663.

See the rejection of claims 15 and 39.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDJ



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